

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 13-mc-87 (SRN/TNL)

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	
)	DECLARATION OF
v.)	JEFFREY WAGNER
JOHN K. THORNTON,)	
)	
Respondent.)	

Jeffrey Wagner declares pursuant to 28 U.S.C. § 1746(1):

1. I am a duly commissioned revenue officer employed in the Small Business/Self Employed Division Midwest Compliance Area of the Internal Revenue Service located at 30 East 7th Street, Saint Paul, Minnesota, 55101.
2. In my capacity as a revenue officer, I am conducting an investigation into the federal income tax liability of Respondent John K. Thornton for the calendar years ending in 2001, 2002, and 2003. In addition, I am conducting an investigation regarding delinquent individual income tax returns for tax periods ending: 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2012.
3. On July 25, 2013 I issued an IRS summons directing Respondent John K. Thornton to appear for the purposes of testifying and producing records in connection with the investigation above-described.
6. Respondent John K. Thornton refused to comply with the summons.
7. On October 25, 2013, proceedings to enforce the summons were commenced pursuant to 26 U.S.C. § 7402(b) and 7604(a).

8. On August 1, 2014, this Court issued its judgment adopting the Report and Recommendation of United States Magistrate Judge Tony N. Leung which recommended enforcement of the summons. That summons, now on file as Exhibits A and B in ECF Docket Entry 2 in this matter, required Respondent John K. Thornton to do the following:

. . . to give testimony and to bring for examination the following information related to the tax liability of the person identified above for the periods shown:

All documents and records you possess or control about income you received for the years: 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011 and 2012

These records and documents include, but are not limited to: Forms W-2 (Wage and Tax Statement), Forms 1099 for interest and dividend income, employee earnings statements, and records of deposit with banks or other financial institutions.

Also include all other books, records, documents and receipts for income from, but not limited to, the following sources: wages, salaries, tips, fees, commissions, interest, rents, royalties, alimony, state or local tax refunds, annuities, life insurance policies, endowment contracts, pensions, estates, trusts, discharge of indebtedness, distributive shares of partnership income, business income, gains from dealings in property, and any other compensation for services (including receipt of property other than money). Include all documents and records about any income you assigned to any other Person or entity.

9. On August 4, 2014 I sent a letters to Respondent John K. Thornton through United States first class mail and certified mail directing his appearance at my office on August 21, 2014.

10. Respondent John K. Thornton failed to appear on that date, and did not contact me requesting any continuance of the appearance date.

11. On September 30, 2014, this Court issued its Order to Show Cause why John K.

Thornton should not be found in contempt for his willful failure to appear as directed.

12. Following a hearing on the Order to Show Cause on November 4, 2014, this Court found that Respondent John K. Thornton should be held in contempt for violating the Order of this Court entered August 1, 2014, but granted Respondent John K. Thornton until December 8, 2014 to respond to the summons herein as directed in this Court's order of August 1, 2014.

13. I sent notice to Respondent John K. Thornton to appear at my office on November 20, 2014 for the purposes outlined in the summons. Respondent John K. Thornton did not appear on that date, claiming scheduling conflicts. I did not agree to any re-scheduling.

14. After Respondent John K. Thornton failed to appear on November 20, 2014, I rescheduled Respondent John K. Thornton's appearance for December 4, 2014.

15. On that date Respondent John K. Thornton appeared. I asked that he answer questions under oath. He declined on religious grounds. I asked him to affirm rather than swear to the truth of his answers. He declined to affirm that his answers were true, also on religious grounds.

16. I asked Respondent John K. Thornton whether he had any of the records described in the summons in the following way:

Question: Do you have any records, as identified in the two summonses that you have been served.

Answer: I have no books and records that are subject to any part 1 subtitle A Income taxes for the calendar years of 2001 through 2012 as defined in 26 USC

7701 (a) (23) taxable year. Specifically, I have no taxable year liability for those calendar years upon the basis of which the income is computed under subtitle A. I have no known legal duty to act as a withholding agent being any person required to deduct and withhold any tax defined in section 26 USC 7701. Withholding agent, the term, withholding agent means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443 or 1461. The only subtitled parties are identified specifically in 26 USC 7701 (a) (16) are required to have money withheld, of which none of these are me.

Question: Do you have any records as identified in the summons.

Answer: Ask and answered.

17. I prepared a list of questions in advance, which Respondent John K. Thornton answered as follows:

Question: At what address do you reside?

Answer: Don't reside anywhere. I live at my wife's home. In Saint Louis Park, Minnesota. I believe it's 4128 Utica Ave South.

Question: What is your date of birth?

Answer: Wasn't there at the time. It's on a birth certificate.

Question: Where were you born?

Answer: Don't know. I was just being born. I don't know where I was born.

Question: What is your occupation?

Answer: It's not really relevant. I have no books and records that have anything to do any subtitle – with any taxable year liability under subtitle A part 1 Income

taxes. And by the way, all of these questions are being answered under threat, duress, and coercion; I want to make that very clear.

Follow-up Question: So your occupation again?

Answer: I have no books and records that have anything to do any taxable year liability under subtitle A part 1 Income taxes, under threat, duress, and coercion. I have provided my response, any other questions.

Question: What do you do for employment?

Answer: I have no books and records that have anything to do any taxable year liability under subtitle A part 1 Income taxes. I don't have enough facts.

Question: What is your level of education?

Answer: I have no books and records that have anything to do any taxable year liability under subtitle A part 1 Income taxes.

18. I asked Respondent John K. Thornton the following questions, to which he responded with excerpts from his statement as set forth as the answer to the question "Do you have any records, as identified in the two summonses that you have been served.?" as set forth in paragraph 16 above:

Do you have a spousal property agreement or any similar type of agreement?

Who pays for the household bills?

Who pays the utility bills?

Do you have a mortgage?

Do you have a homeowner's policy?

Who pays your homeowners insurance?

Who pays when you go out to eat?

Where do you handle your financial transactions?

Where do you do your banking or keep financial accounts?

What investments do you maintain?

What real property do you own?

Please describe what property and possessions you own.

Do you have any vehicles, cars, trucks, motorcycles, trailers, boats, aircraft?

Do you have any type of vehicle loan, through who, how much is owed?

Are you the beneficiary of a trust?

Are you the beneficiary of a trust, estate, or life insurance policy?

Have you contributed to a trust?

Are you a trustee or fiduciary?

Describe the transfer of ownership of any assets or property you previously owned.

Who uses credit cards in the household?

Do you have any credit cards?

Do you have a driver's license?

Describe the vehicles you own or have interest in.

What vehicles do you drive?

How did you arrive at your appearance today?

Who pays the vehicle insurance?

What are your sources of income?

When did you last file a tax return?

19. I asked Respondent John K. Thornton whether he had filed individual income tax returns for the years from 2003 through 2013. He responded that he had no known legal duty to act as a withholding agent the only person required to deduct any withholding taxes defined in 26 USC 7701 (a) (16), and had no books and records that have anything to do any taxable year liability under subtitle A part 1 Income taxes.

20. I advised Mr. Thornton that his responses were not a meaningful response to our summons. I advised Mr. Thornton that it was our goal to get him to provide meaningful responses and records. He responded "I provided my responses".

21. Based upon the interview questions and answers detailed above, I do not believe that Respondent John K. Thornton has responded to the summons which is the subject matter of this action in the manner directed by the Court's order of August 1, 2014 in that he failed to produce any of the described records, and failed to meaningfully answer questions related to the investigation.

22. I make this declaration under penalty of perjury, and in compliance with this Court's order of November 4, 2014.

Executed this 8 day of December, 2014.

s/ Jeffrey Wagner
Jeffrey Wagner
Revenue Officer